

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

BRYAN KEITH BLACKBURN,)	
)	
Plaintiff,)	
)	
vs.)	Case No. CIV-14-0723-F
)	
NORMAN HANKS,)	
)	
Defendant.)	

ORDER

Plaintiff Bryan Keith Blackburn, a state prisoner appearing *pro se* and *in forma pauperis*, brings this civil rights action under 42 U.S.C. § 1983. Magistrate Judge Gary M. Purcell has issued a Report and Recommendation (the Report, doc. no. 7), recommending that the cause of action be dismissed on filing based on an initial review of the sufficiency of the complaint. The Report recommends dismissal pursuant to 28 U.S.C. § 1915(e)(2)(B), for failure to state a plausible claim upon which relief may be granted under 42 U.S.C. § 1983. The Report also notified plaintiff that dismissal of this cause of action may constitute one “strike” pursuant to 28 U.S.C. § 1915(g) upon affirmance or waiver of plaintiff’s opportunity to appeal. The Report further advised plaintiff that he had until August 6, 2014, within which to file any objection to the Report, and that failure to timely object would waive appellate review of both factual and legal issues contained in the Report.

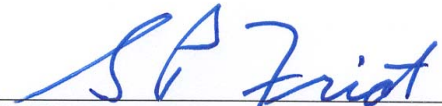
In its order of July 29, 2014, doc. no. 13, the undersigned granted plaintiff’s motion for an enlargement of time and extended plaintiff’s deadline for filing any objection to October 6, 2014. The order reminded plaintiff that failure to timely object to the Report waives appellate review of both factual and legal issues contained

in the Report. On August 11, 2014, the undersigned denied plaintiff's motion seeking to stay this action. Doc. no. 15. In that order the court again reminded plaintiff that any objection to the Report remained due on October 6, 2014, and that failure to file a timely objection waives appellate review of both factual and legal issues contained in the Report. No objection to the Report has been filed, and no motion requesting an extension of time in that regard has been filed.

Having conducted its own review and with there being no objection, the Report and Recommendation of Magistrate Judge Purcell is **ACCEPTED, ADOPTED** and **AFFIRMED**. This action is hereby **DISMISSED** upon filing pursuant to 28 U.S.C. § 1915(e)(2)(B) for failure to state a claim upon which relief can be granted, as recommended by the magistrate judge. Upon affirmance or waiver of the opportunity to appeal, this dismissal constitutes one "strike" pursuant to 28 U.S.C. § 1915(g).

Plaintiff's objection to the Magistrate Judge's earlier order, doc. no. 5, which granted plaintiff *in forma pauperis* status but which also required an initial partial filing fee of \$14.26 as representing 20 percent of the average monthly deposits in plaintiff's prison accounts for the six-month period immediately preceding the filing of the complaint, is **DENIED**. *See*, objection at doc. no. 8, letter at doc. no. 9.

Dated this 27th day of October, 2014.



STEPHEN P. FRIOT
UNITED STATES DISTRICT JUDGE